

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
37.12.401 pertaining to laboratory	)	AMENDMENT
testing fees	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On August 1, 2008, the Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 9, 2008 to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

3. The rule as proposed to be amended provides as follows. New matter is underlined. Matter to be deleted is interlined.

37.12.401 LABORATORY FEES FOR ANALYSES (1) Fees for clinical and environmental analyses performed by the laboratory of the Department of Public Health and Human Services are set to reflect the actual costs of the tests and services provided.

(2) The Department of Public Health and Human Services shall maintain a list of all tests available from the lab and the price of each test. The department adopts and incorporates by reference the Laboratory Test Fee List effective ~~July 1, 2007~~ August 1, 2008, which shall be available on the web site of the Department of Public Health and Human Services at [www.dphhs.mt.gov/forms/](http://www.dphhs.mt.gov/forms/), and by mail upon request to the lab at the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 6489, Helena, MT 59604-6489.

(3) The fee for a specific lab test will be lowered by the Department of Public Health and Human Services to a level not exceeding the cost to the department of the test in question whenever a change of analysis method warrants lower fees.

(4) Fees for analyses other than those listed will be established at the level of comparable analyses.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

4. This notice is being filed to replace MAR Notice No. 37-437 published at page 780 of the 2008 Montana Administrative Register, issue number 8. The department discovered that the proposed new fee list had not been available on the department web site for review and comment. Therefore the department elected to file a new notice to permit the public and interested parties sufficient time to review the proposed fee changes and submit comments.

ARM 37.12.401 provides information regarding the fees charged for biological and environmental tests performed by the Montana State Laboratory, in conformity with state statute. The Department of Public Health and Human Services (the department) proposes to modify the rules to reference the new version of the state laboratory fee list, which provides an average increase of 4% in the cost of lab services, though fee increases on a test-by-test basis vary. The revised fees are necessary to keep the fees charged for lab service in line with the actual current cost associated with providing that service.

The proposed fee increases will result in a cumulative increase in fees for all laboratory services of approximately \$125,000, affecting the approximately 1,000 annual customers of the state laboratory. The fee increases proposed represent the minimum increases necessary to maintain the state laboratory's current level of services, and are reasonably necessary to allow the state laboratory to fulfill its obligations as an adjunct to public health and health care functions in the state of Montana. The proposed fees account for the increased costs incurred by the laboratory since the last fee increase, including increased personnel costs, increased costs of supplies, and increased costs of new and replacement testing equipment.

The department considered not increasing its testing fees, but concluded that not doing so would result in the laboratory spending more to provide services than it would recover in service fees, and would result in the laboratory having to discontinue services.

The department will post the proposed revised fee list along with a copy of this notice in the rules notices section of the DPHHS web site at [www.dphhs.mt.gov/legalresources/ruleproposals/index.shtml](http://www.dphhs.mt.gov/legalresources/ruleproposals/index.shtml).

5. Interested persons may submit their data, views, or arguments concerning the proposed action in writing to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951, no later than 5:00 p.m. on June 19, 2008. Comments may also be faxed to (406)444-9744 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov). The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must

make written request for a public hearing and submit this request, along with any written comments to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; by fax (406)444-9744; or by e-mail to dphhslegal@mt.gov no later than 5:00 p.m. on June 19, 2008.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the administrative rule review committee of the Legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 100 based on the 1000 customers affected by rules covering state laboratory fees and services.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Shannon McDonald  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 12, 2008.